

IN THE UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF TENNESSEE  
 CHATTANOOGA DIVISION

TANJA BENTON,

Plaintiff,

v.

BLUECROSS BLUESHIELD OF  
 TENNESSEE, INC.,

Defendant.

1:22-CV-118

Chattanooga, Tennessee  
 June 25, 2024

BEFORE: THE HONORABLE CHARLES E. ATCHLEY, JR.  
 UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

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 Chattanooga, Tennessee 37403

FOR THE DEFENDANT:

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JURY TRIAL  
 FIRST DAY OF TRIAL  
 EXCERPT OF PROCEEDINGS  
OPENING STATEMENTS

1           (Prior proceedings were heard but  
2           not requested to be transcribed herein.)

3           MR. HAMILL: Predetermined. Take it or leave  
4           it. One size fits all. Those should not be  
5           descriptions of a company's response to a religious  
6           accommodation case, but that is exactly the response and  
7           approach that BlueCross took when it was responding to  
8           objections to its COVID vaccine mandate.

9           And, ladies and gentlemen, this trial is not  
10          about the legalities of the company's COVID vaccine  
11          mandate itself, nor is this trial about whether the  
12          vaccine is safe or effective. Rather, this trial is  
13          about one employee's request for a religious  
14          accommodation to the company's vaccine mandate.

15          Now, Dr. Tanja Benton was a long-time BlueCross  
16          employee, hired in 2005. For most of her career, she  
17          worked as a biostatistical research scientist. It's a  
18          mouthful. She crunched a lot of numbers. She analyzed  
19          a lot of data. And mainly her job was a  
20          behind-the-scene -- a behind-the-scenes role.

21          Now, Dr. Benton typically had 10 to 12 clients  
22          with whom -- that she directed her interactions only  
23          once a year, and that was normally in the springtime.  
24          And these interactions that she had with clients were --  
25          were typically called "annual client meetings." Now,

1     you will hear that these meetings were normally an hour  
2     and a half in length. And you'll hear Dr. Benton  
3     testify that less than 1 percent of her total annual  
4     work time was spent interacting directly with these  
5     clients.

6             Now, like many employees, the COVID pandemic in  
7     the spring of 2020 changed Dr. Benton's job status. She  
8     and her colleagues shifted from working at the corporate  
9     office to performing 100 percent of their job duties  
10    from home. And COVID also affected how client meetings  
11    were conducted. Before the pandemic, there were  
12    normally in-person meetings. But with the pandemic, the  
13    shift went to 100 percent virtual meetings using  
14    Microsoft Teams and other type of virtual livestreaming  
15    technology.

16            Now, despite the change in the mode of  
17    Dr. Benton's client communications, the proof will show  
18    that her limited client interactions were just as  
19    effective through virtual technology as they were in  
20    person. And you're going to hear evidence that none of  
21    her clients ever complained about virtual meetings. And  
22    there was no proof from the clients that her virtual  
23    meeting presentations were any less effective than her  
24    older presentations in person.

25            In fact, you're not going to hear any evidence

1     that during this time period clients were ever asking  
2     for in-person meetings to resume. In fact, the proof is  
3     going to show that no members of BlueCross management  
4     within Dr. Benton's chain of command ever even brought  
5     up the subject of resuming in-person client meetings.

6             So for 18 months, Dr. Benton and her coworkers  
7     continued to work in a virtual at-home role with no  
8     problems. Now, in the summer of 2021, BlueCross's  
9     executive leadership team decided to impose a COVID  
10    vaccination mandate on all employees that it deemed to  
11    be public facing. Now, the company decided that  
12    Dr. Benton -- her role would also fall under this  
13    mandate. So, therefore, on August the 11th, 2021,  
14    Dr. Benton was notified via a companywide email that her  
15    job would now require the COVID vaccination for her to  
16    keep her job.

17            Now, this news was deeply disturbing to  
18    Dr. Benton. She had discovered through her own  
19    research, you will hear, that the two COVID vaccinations  
20    that had been approved for use in the United States at  
21    the time involved the use of aborted fetal cell lines in  
22    either the testing or development. Now, as part of her  
23    Christian faith, Dr. Benton had a strong biblically  
24    rooted belief about the sanctity of human life,  
25    including the life of a fetus, and, therefore, she had a

1 firm religious objection to abortion. As you'll hear  
2 Dr. Benton explain, she sincerely believed that  
3 ingesting the vaccine would defile her body and go  
4 against God's law. And for this reason, Dr. Benton's  
5 religious convictions prohibited her from taking the  
6 COVID vaccine.

7 Well, as soon as was practical, you'll see that  
8 Dr. Benton submitted her religious accommodation request  
9 to human resources. And you're going to have the  
10 opportunity in this case to read her detailed statement.  
11 Her accommodation was very simple. She asked if she can  
12 continue working in her remote role, including  
13 interacting virtually with clients as she'd been doing  
14 for the past 18 months, but just not getting vaccinated.

15 After all, what harm would she pose by  
16 spreading COVID if she was meeting virtually with her  
17 clients? And you'll hear at the time there was no talk  
18 of resuming these client meetings in person any time in  
19 the near future. We submit that Dr. Benton's request  
20 was a reasonable request and that it posed no undue  
21 hardship to the company.

22 Now, unbeknownst to Dr. Benton, before she even  
23 was able to make a request for accommodation, the  
24 company had already decided its plan of action to deal  
25 with anyone who submitted an accommodation request to

1 its vaccine mandate.

2 Ladies and gentlemen, I submit to you that this  
3 is the most disturbing part of this case. For you see,  
4 before the COVID pandemic, BlueCross already had a  
5 procedure and a protocol in writing for handling  
6 religious accommodation requests. Under that procedure,  
7 which you'll see, when an employee submits a religious  
8 accommodation request, a frontline human resources  
9 person along with the employee's direct supervisor will  
10 get together with the employee and determine whether an  
11 accommodation can be made.

12 But when it came to the company's COVID vaccine  
13 mandate, the company deliberately chose not to follow  
14 its own policy. Instead, before ever receiving even the  
15 first accommodation request from any employee, the  
16 company determined its so-called "accommodation" that it  
17 was willing to offer to any employee objecting to the  
18 vaccine mandate no matter who they were or what their  
19 unique jobs were.

20 Now, unlike the policy that was already on the  
21 books, this new policy was far from an individualized  
22 assessment. No, this was predetermined. This was one  
23 size fits all. And this was certainly a  
24 take-it-or-leave-it proposal. And you'll get a chance  
25 to see this new policy, and I want you to notice how

1       vastly different the new policy was to the old policy.

2               Ladies and gentlemen, we submit that it was  
3       designed this way on purpose, and that was to effect a  
4       uniform outcome.   See, the new procedure was clear about  
5       achieving a uniform outcome.   This -- it's in writing,  
6       and you'll see this statement that the company made in  
7       the procedures.

8               Quote, "As a general matter, the company views  
9       requests for an accommodation in the form of maintaining  
10      current job functions, but not getting fully vaccinated  
11      is unduly burdensome to the company," end quote.

12              That statement was made even before the first  
13      employee had ever submitted a request for accommodation.  
14      So even before Dr. Benton had a chance to explain her  
15      side of the story for her to give her proposal, the  
16      company had already decided what it was willing to offer  
17      to Dr. Benton and to every other employee who was  
18      objecting.

19              So here are the three things that the company  
20      said it was willing to offer:   Number one, it said the  
21      company would remove any public-facing duties of an  
22      objecting employee for 30 days; second, the company  
23      would allow the employee, during this 30-day period, to  
24      hunt for another internal vacant job not subject to the  
25      mandate; and, number three, the company said that the

1 employee could use this 30-day period to reconsider  
2 getting vaccinated.

3           Essentially, this accommodation offer from  
4 BlueCross was essentially a delay of the employee's  
5 termination for 30 days. That's all it was. We submit  
6 that this predetermined, one-size-fits-all offer made  
7 without any input whatsoever from any employees who were  
8 requesting the accommodations was not a reasonable  
9 accommodation at all.

10           You've already heard about the law. The law  
11 requires affirmative action by an employer to help  
12 resolve, if possible, the conflict between the  
13 employee's religious beliefs on the one hand and the  
14 conflicting policy on the other. And as part of its  
15 legal obligation, the employer must consider all  
16 available options as potential accommodations before  
17 making a decision.

18           Ladies and gentlemen, the proof is going to  
19 show in this case that BlueCross did not thoroughly  
20 consider all of the potential accommodations out there.  
21 Rather, without input from any of the objecting  
22 employees, the executives at BlueCross decided that no  
23 one in a, quote, "public-facing role" could ever serve  
24 in that role without being vaccinated, period. Masking,  
25 social distancing, periodic COVID testing, any other



1 potential accommodation, they refused to consider. No  
2 matter the person's unique job role, no matter with whom  
3 they were interacting, how frequently they were  
4 interacting. One size fits all. That was the approach.

5 Now, Dr. Benton accepted the accommodation  
6 offered by the company under protest because of her deep  
7 religious convictions. She couldn't reconsider not  
8 getting vaccinated. That wasn't an option for her.

9 And the offer to remove any, quote,  
10 "public-facing duties" for 30 days was of no practical  
11 benefit. Ladies and gentlemen of the jury, the proof  
12 will show she had no public-facing duties scheduled for  
13 that 30-day period. In fact, for the next five months,  
14 she had no public-facing duties.

15 As for the 30-day period to look for another  
16 job not subject to the mandate, this too was hollow and  
17 of no practical benefit to Dr. Benton. The proof is  
18 going to show that BlueCross provided no affirmative  
19 assistance whatsoever to Dr. Benton in trying to find  
20 some type of job that met her qualifications that was  
21 not subject to the vaccine mandate.

22 You're going to see emails, and you're going to  
23 hear Dr. Benton and other HR professionals testify here  
24 that Dr. Benton asked on multiple occasions, "Hey, would  
25 you at least let me know which of these job vacancies

1 are subject to the mandate or not so I can figure out  
2 which ones I can apply to?" That's a simple request;  
3 right? Did BlueCross do anything to help? Nope. They  
4 never would provide a list.

5           You'll also hear proof that during this 30-day  
6 time window, there was a hiring freeze -- a hiring  
7 freeze, which made the posting of job vacancies  
8 extremely difficult and very slow in the process. Also,  
9 Dr. Benton was faced with the struggle of not being able  
10 to find jobs that met her qualifications among the  
11 vacant postings. And when she did eventually find two  
12 that met her qualifications, BlueCross, rather than just  
13 allowing her to transfer into those jobs, said no,  
14 you're going to have to go through the competitive bid  
15 and interview process, which even made it even more  
16 difficult for her to slow the process down.

17           Ladies and gentlemen, Dr. Benton, she did apply  
18 for the only two jobs that she was qualified for that  
19 were not subject to the mandate, and, not surprisingly,  
20 she didn't get an interview, nor was she selected for  
21 the jobs. So you see, the company's 30-day offer to go  
22 find another job was simply a sham. Simply a sham. It  
23 was not a permanent, workable solution. It was a delay.  
24 A 30-day delay.

25           Now, you're probably asking yourselves the big

1 question here. Why didn't BlueCross just grant her  
2 request? Why was it so problematic for Dr. Benton to  
3 continue working virtually with her clients as she'd  
4 been doing for the past 18 months without any trouble?

5 THE COURTROOM DEPUTY: Five minutes.

6 MR. HAMILL: In this case, the company claims  
7 that it was an undue burden. They're claiming that she  
8 had to meet in person with these clients. Well, that  
9 argument is a sham.

10 The law defines undue hardship as a substantial  
11 increased cost to the company's business. You're going  
12 to hear testimony that Dr. Benton meeting with clients  
13 virtually was of no impact on client relationships, nor  
14 did it have any impact on cost to the business.

15 You're going to hear a witness, Tony Pepper.  
16 He was the director responsible over all the clients for  
17 whom Dr. Benton provided -- provided services, and he  
18 will testify that there was no harm whatsoever to client  
19 relationships because Dr. Benton was meeting virtually  
20 with them rather than in person. In fact, he's going to  
21 tell you that it was not essential for the business  
22 consultant, analytical consultant like Dr. Benton to  
23 meet in person with its clients. And even Dr. Benton's  
24 supervisor will tell you that no clients complained that  
25 Dr. Benton's virtual interactions were no better or no

1 worse than her in-person interactions.

2           You will also hear importantly -- this is  
3 important -- it was the client, not BlueCross, who chose  
4 which method they wanted to have their meetings. If the  
5 clients wanted virtual meetings, which -- the evidence  
6 shows BlueCross couldn't change the client's mind.

7           So there's going to be no evidence that her  
8 proposal was an undue hardship.

9           You see, we're here today because BlueCross  
10 chose not to offer a reasonable accommodation. The end  
11 result was that Dr. Benton was fired on November  
12 the 4th, 2021. Ironically, less than 30 days later,  
13 BlueCross's vaccine mandate came to a screeching halt.  
14 The mandate was only in effect two months, ladies and  
15 gentlemen. And you're going to hear BlueCross paused  
16 enforcement of that mandate on November the 30th, 2021,  
17 and that the company has never resumed the mandate since  
18 that date.

19           You will also hear proof that Dr. Benton's  
20 replacement took six months to be hired. That  
21 replacement came in in May of 2022. And oh, by the way,  
22 by that point in time, Dr. Benton's job did not require  
23 a COVID vaccination.

24           Now -- now, after the mandate was paused, was  
25 there any effort by BlueCross to reach out and recruit

1 Dr. Benton back to her old job? No, sadly not. But for  
2 Dr. Benton, it took her 13 months to find a new job, and  
3 you're going to hear her struggles as she goes to  
4 interview after interview after interview to then be  
5 ghosted and then to be ghosted. The struggles.

6 Now, ladies and gentlemen, you've heard the  
7 three main questions that you're going to have to  
8 decide. Was Dr. Benton's objection to the COVID  
9 vaccination based on a sincerely held religious belief?  
10 Yes, it was. And the proof that you're going to hear to  
11 the contrary from BlueCross is nothing but speculations  
12 and wild theories not backed up by any evidence.

13 Second question you've got to decide: Was the  
14 offer or proposal from BlueCross, was it a -- a real  
15 reasonable accommodation? Answer: No, it was not.

16 And third is Dr. Benton's proposal: Was it  
17 really an undue hardship as the company claims?  
18 Absolutely not. And as a result, Dr. Benton suffered  
19 harm. She lost her job because of a violation of the  
20 law. She suffered damages as a result. The primary  
21 breadwinner of the Benton family lost her entire income  
22 as well as valuable healthcare insurance, which covered  
23 her husband and her three kids. She suffered great  
24 stress and anxieties and frustrations as she went  
25 through a difficult 13-month period desperately looking

1 for work.

2 All of this harm could have been avoided had  
3 BlueCross simply followed the law rather than pushing  
4 forward its predetermined one-size-fits-all agenda that  
5 ignored Dr. Benton's specific roles and her very  
6 limited --

7 THE COURTROOM DEPUTY: 20 minutes is up.

8 MR. HAMILL: -- client interaction.

9 Thank you.

10 THE COURT: Thank you, Mr. Hamill.

11 Mr. Boston?

12 MR. BOSTON: Thank you, Judge.

13 THE COURT: How much time, Mr. Boston?

14 MR. BOSTON: 20 minutes.

15 THE COURT: Okay.

16 MR. BOSTON: Members of the jury, the opening  
17 statement is designed just to be a road map to where the  
18 lawyers think that they -- the evidence will go.

19 In voir dire, I mentioned to you that you're  
20 going to hear from multiple people and asked if you knew  
21 them. The individuals you're going to hear from include  
22 Roy Vaughn, who was one of the upper-level members of  
23 the human resources department at BlueCross BlueShield;  
24 a gentleman named Hal Gault, who is right under  
25 Mr. Vaughn; and a young a lady named Jennifer Shields,

1 who is right under Mr. Gault. And those are the human  
2 resources people that have responsibility for  
3 administering the program that counsel has told you  
4 about.

5 And this is the mandatory vaccine proposal that  
6 was turned into a policy of BlueCross BlueShield for a  
7 short period of time between roughly -- roughly August  
8 of 2021 and November of 2021. And the proof that's  
9 going to be presented to you will explain what happened  
10 to the policy and why. And that proof is going to  
11 explain that -- how it came about and why and then how  
12 it was administered for not just Dr. Benton -- Dr. --  
13 but all the people that were public facing, which were  
14 800 different people within the BlueCross organization  
15 that had public-facing positions.

16 I'm going to refer to Dr. Benton throughout the  
17 trial as "Dr. Benton" because she has a PhD, a doctorate  
18 degree. And out of respect for her degree, that's how  
19 I'm going to refer to her. She refers to herself in her  
20 business when she still worked for my client as a  
21 consultant. Consultants were a part of the operation in  
22 which she worked, and I'll cover that in just a moment.

23 At the end of the trial, I'm going to be asking  
24 you in my closing statement, consistent with Judge  
25 Atchley's instructions, to return a verdict for

1 BlueCross BlueShield finding that it did not violate the  
2 equal employment opportunity law that's relevant to this  
3 case.

4 BlueCross BlueShield has been in business, as  
5 you know -- we all know -- for many, many years here in  
6 Chattanooga. It has roughly 6,000 employees across the  
7 state of Tennessee in all 95 -- they are in almost all  
8 95 counties. It has major office operations at the time  
9 we're dealing with in Memphis, Nashville, and  
10 Chattanooga, which is where its headquarters are. It is  
11 the largest private employer in Chattanooga.

12 In 2022 -- excuse me -- 2020 and years before,  
13 BlueCross has in place a policy and procedure that says  
14 we will comply with the EEO laws, including those that  
15 relate to accommodations -- reasonable accommodations  
16 for covered needs. And for purposes of COVID, there  
17 were two that people raised before -- before the company  
18 by way of a request for accommodation. One would be  
19 something like medical issues that precluded them from  
20 taking the COVID virus [sic]. The -- the company's  
21 policy on EEO, equal employment opportunity, compliance  
22 covers those.

23 The second one was some people would -- at the  
24 time in their employment, from time to time, in all --  
25 in all employment laws, have a request for a religious



1 accommodation. The request for the religious  
2 accommodation covered many, many things prior to COVID.  
3 People who couldn't work because of a religious tenet  
4 from their religion on Saturdays. And Seventh Day  
5 Adventists come to mind. People who couldn't work on a  
6 particular holiday. Easter comes to mind. Or they had  
7 an objection because of their doctrinal underpinnings of  
8 their religion that they needed to request an  
9 accommodation.

10 Those are what had been presented prior to 2020  
11 when COVID fell in on all employees and individuals  
12 alike. That's what the policy related to. That's what  
13 had occurred before. The EEO policy says -- in its very  
14 last line, it covers -- it says the policy can be  
15 adjusted and changed from time to time --  
16 paraphrasing -- as needs permit. That's what happened  
17 in 2020 forward because nobody, the proof will show, had  
18 ever addressed this before.

19 There had been minor-type issues that related  
20 to diseases that didn't rise to the level of pandemics.  
21 There was an issue prior to this where measles became  
22 prevalent throughout society where people had to be  
23 vaccinated. Certain job descriptions within the company  
24 say you may need to get a vaccination.

25 BlueCross will testify through -- its witnesses

1 will testify that we thought that made sense because  
2 we're a healthcare company that deals with people and  
3 members in their homes as well as vendors as well as  
4 providers and plan operators.

5 BlueCross doesn't -- the proof will be --  
6 doesn't just sit on the hill and do nothing. A good bit  
7 of what it does in its public-facing roles is going to  
8 people's homes and providing caregivers or wellness  
9 coordinators or people that help administer care for  
10 people. A good deal of what it does -- you'll hear  
11 substantial proof on this -- is it deals with employers,  
12 individual commercial companies, individuals, as well as  
13 government entities about what they need in their plan  
14 and how they're going to get it and how they're going to  
15 pay for it.

16 That's generally what Ms. -- Dr. -- Dr. Benton  
17 did in her public-facing role. Her role was to analyze  
18 data throughout the year from individual companies that  
19 were assigned to her -- big ones -- and help them come  
20 to the conclusion as to what their healthcare plan might  
21 should include for the needs of their -- the needs of  
22 their employees and the cost factor they were willing to  
23 pay for it. And it was an incredibly valuable service  
24 that BlueCross BlueShield provided to those employers.

25 Dr. Benton was the person that was the

1 figure -- not just the figurehead. She was the  
2 lightning rod of that discussion, which was annual  
3 meetings and sometimes quarterly. And she would go --  
4 throughout all of her career that she served as a  
5 consultant in the department that she worked, she would  
6 go and handle the substantive portion of that meeting.

7 And she was liked substantially by these  
8 customers. It was important to them. You will hear  
9 testimony as to why she was there and what value she  
10 added to the discussion. That's why she was public  
11 facing. The 1 percent of the time she spent doing that,  
12 you'll hear proof as to the importance of that.

13 You're going to hear from a man named Michael  
14 McPherson. Mike was her direct supervisor. He  
15 administered her department, and he knows the importance  
16 of the meetings that she was asked to handle. That part  
17 of -- she wasn't the only person. There -- others were  
18 there, but when the rubber met the road, she was the  
19 person the customers wanted to hear from. Why? Because  
20 she had done the data crunching to explain to them why  
21 this made sense for their plan and for all of their  
22 employees to be a better benefit to them.

23 You're going to hear proof of the importance of  
24 that to BlueCross's competitive advantage in the  
25 marketplace. It was there to derive the -- the data,

1 and it did it well to then convey it to the customers,  
2 the -- the plan organizers, the other members of the  
3 world in a way that they could decide this is important  
4 to us for our business operations, not just yours.

5           If they bought more insurance, if they changed  
6 their coverage, if they did it in a different way, if  
7 they expanded the coverage, that started with  
8 Dr. Benton. If she wasn't included in that  
9 communication and that role, that benefit in the  
10 marketplace goes away. That's where we -- you'll hear  
11 the proof -- have a competitive advantage over our  
12 competitors, United, Amerigroup, and other healthcare  
13 providers, other healthcare insurers. But, more  
14 importantly, it's part of the mission of BlueCross  
15 BlueShield to help their members that are derived  
16 through the relationships with employers.

17           Dr. Benton, her skill at this was good.  
18 That -- she was -- she was allocated to give some of the  
19 most largest, most important customers that we had --  
20 that we have to handle it, and she did it well.

21           Dr. Benton has brought forward a claim that  
22 says because of my beliefs in a certain religion, I  
23 shouldn't have had to go and participate in those  
24 meetings once BlueCross went back to them. Notice I  
25 said "once BlueCross went back to them." Prior to

1 March -- prior to March of 2020, the norm for Dr. Benton  
2 and all other consultants in her department was hands-on  
3 meetings if the customer wanted them. Usually annually,  
4 sometimes quarterly. That was part of the job.

5 In March of 2020, it was temporarily --  
6 temporarily removed when BlueCross shut down its  
7 operations like other employers did. Everybody went  
8 home, including the CEO, the COO, the CFO, the large  
9 upper-level management employees. Most of them started  
10 working from home for an indefinite period of time  
11 before there was some flex that would be done depending  
12 on what job position somebody had. But otherwise --  
13 excuse me -- you reported to work.

14 In March of 2020, the company said because of  
15 several things, the -- the prevalence of the pandemic,  
16 not knowing where it was going, the risk of people, it  
17 simply said we're going remotely. When it went  
18 remotely, substantial changes had to be made. It had to  
19 go -- go and buy -- and it did -- equipment for people  
20 to work from home, computers, monitors, systems to put  
21 them in place. It had to adjust job descriptions and  
22 job assignments if, in fact, people were no longer able  
23 to work for a temporary period of time by interfacing  
24 directly with their customers, their clients; if they  
25 were a home caregiver, their people at home; if they

1     were Dr. Benton, the -- the customers she worked with  
2     during annual meetings and getting to that; their teams  
3     internally. They had to take away direct interaction  
4     while the pandemic was addressed, and they did.

5             The company did it, and it did it through the  
6     people that I mentioned you're going to hear from. This  
7     doesn't just happen by edict from above. It happened by  
8     decisions and responsibilities that were assigned to  
9     people, one of which -- the decision to go home, to  
10    close down headquarters -- came from what's called --  
11    you'll hear the proof -- "senior leadership." That is  
12    the highest level -- the highest level of administrative  
13    and leadership responsibility at BlueCross. It is the  
14    group that took the concept of what are we going to do  
15    about the pandemic and addressed it. It addressed it  
16    for the safety of people, including its members, the  
17    safety of people with which it interacted outside, its  
18    customers, the safety of its people that worked for it,  
19    and to adjust while the world found its levelling water  
20    for the COVID pandemic.

21            Before that, some people worked from home part  
22    time. Many people still worked from headquarters. It  
23    looked at those positions to see, well, now that we're  
24    in a different universe, can we adjust some of those?  
25    And it was successful in adding more people to

1 telecommuting roles from at home. That didn't  
2 include -- didn't include Dr. Benton's position.

3 When the company started to try to figure out  
4 what to do post-COVID, it had to pivot. It had to pivot  
5 from what it did before, including its own jobs and how  
6 it's going to deliver them. If nobody could have  
7 meetings for a while, it couldn't either.

8 But it never had a concept that -- you will not  
9 hear any proof of this whatsoever -- that it ever  
10 intended to adjust permanently to where Dr. Benton's  
11 position and all of the other Dr. Bentons that worked in  
12 these positions, all the other consultants were going  
13 not to deal face to face with individuals on -- on the  
14 other side of their relationships. Never once was that  
15 in concept.

16 BlueCross didn't know the timing of that  
17 because nobody knew. Nobody knew the timing of the  
18 pandemic.

19 The lady to my left, I introduced her before.  
20 That's Dr. Andrea -- I forgot your name.

21 MS. WILLIS: Willis.

22 MR. BOSTON: Willis. Sorry.

23 -- Dr. Andrea Willis. She works for BlueCross  
24 full time. She's its medical director. She's part of  
25 its senior leadership role. She was a part of the

1 process by which Dr. Willis and the CEO and other senior  
2 leadership -- you'll hear who they were -- were -- there  
3 were about eight to ten people who met regularly as  
4 COVID was advancing and then COVID was receding to  
5 determine what the company should and could do by way of  
6 putting in place its -- its rules and regulations about  
7 what to do to get back to work. She monitored  
8 everything that they saw and needed to do as a medical  
9 doctor to determine and provide that to the company. Do  
10 this. Do that. Here's why. Here's otherwise.

11 One of the things that fell on to her was to  
12 evaluate what -- the word is the "efficacy," meaning the  
13 benefit of the utility of a COVID vaccine mandate, and  
14 Dr. Willis recommended it along with the senior  
15 leadership, and that's how the policy came in place. It  
16 was designed to get the company back to work steady  
17 state in the best way to deliver its services. And  
18 Dr. Willis was instrumental in that, and you will hear  
19 her reasons why.

20 THE COURTROOM DEPUTY: Five minutes.

21 MR. BOSTON: Thank you.

22 One of the things that happened in that is  
23 Dr. Willis -- excuse me -- Dr. Benton, her position was  
24 selected. You're going to hear why that it was  
25 selected. It's because of her interaction with the



1 clients which she was assigned and the importance of  
2 that to the company's operations. I just ask you to  
3 listen carefully to the -- to Mr. McPherson's testimony  
4 about that as to why that was done.

5 Now, one part about this -- and I want to  
6 mention this -- two -- two other points that I think are  
7 important in my opening statement. You're not going to  
8 hear any proof -- you're not going to hear any proof  
9 from Dr. Benton, I don't believe, that she thought  
10 people were out to hurt her. The "sham" that I just  
11 heard about, it was put in place by people who wanted  
12 people to be at work and to stay at work and come back  
13 to work.

14 The problem was what Dr. Benton had presented  
15 was a nonstarter. It is I will come to work so long as  
16 I can do it from home and not have to need to meet with  
17 my people -- excuse me -- my -- my clients face to face.  
18 Who put the restriction on it is something that is  
19 important for you to evaluate. Dr. Benton never  
20 proposed something that would have allowed her to come  
21 back and go back to work in her job as it was before.

22 One of the elements that Dr. Benton has to  
23 prove is if she is -- if you believe her, you decide  
24 that she is entitled to some recovery. That's her  
25 damages. When Dr. Benton left, she -- she took a

1 "sabbatical," as she used it, some -- some time off.  
2 And when she did that, you can decide if she was  
3 actively looking for a job or not.

4           When she got a job, she loves it. It pays more  
5 than what she made at BlueCross BlueShield. It's  
6 meaningful work. It gives her an opportunity to make  
7 money in her new job. And you will find that when she  
8 took that job, she has said before she took it, I don't  
9 want to work for BlueCross anymore. She used a  
10 pejorative term. I'm not going to use it in my opening.  
11 I want you to evaluate her claim for damages consistent  
12 with the elements of proof that she has to meet.

13           Now, final point I'm going to make in my  
14 opening statement is -- is one that is difficult.  
15 Dr. Benton -- you're going to hear an instruction, I  
16 believe, from Judge Atchley -- has to prove that she had  
17 a sincerely held religious-based belief in order to ask  
18 for the accommodation. There's going to be proof to  
19 question that. I won't go into detail, but listen for  
20 it.

21           She has made inconsistent statements. She has  
22 made statements that are designed to show a political  
23 opposition to taking the vaccine. And she's taken steps  
24 in her own family that she -- her objections to the  
25 vaccination was perhaps not religious based, but is

1 based on politics, personal desires, and personal  
2 interests.

3           If that is the case, I'm going to ask you to  
4 find that she did not have a sincerely held religious  
5 belief. The company, at the time it was working through  
6 the accommodation process with her, accepted that she  
7 did so, that the accommodation process could be  
8 triggered. If at that point the company said, you don't  
9 have it, the accommodation process would start. It  
10 didn't do that. It brought her forward into that and  
11 then applied the accommodations it thought would work.

12           The final point is the remote -- that  
13 accommodation is not an exclusion. It's what is  
14 reasonably able to be done based on all costs. Not just  
15 economic, but all costs to the company's business at the  
16 time. You're going to hear substantial proof that what  
17 Dr. Willis proposed, which is to stay home and not be  
18 subject to the mandate, didn't work for her job position  
19 for very basic, important reasons to the company's  
20 operations.

21           Thank you for listening to my opening  
22 statement. I'm going to ask you at the end of the --  
23 the trial to come back and prove -- and rule that  
24 Dr. Benton has not proven her case by the standard that  
25 Judge Atchley will ask you to apply.

1 Thank you very much.

2 (Subsequent proceedings were heard but  
3 not requested to be transcribed herein.)

4 END OF PROCEEDINGS

5

6 I, Stephanie Fernandez, do hereby certify that  
7 I reported in machine shorthand the proceedings in the  
8 above-styled cause, and that this transcript is an  
9 accurate record of said proceedings.

10

11 s/Stephanie Fernandez  
12 Stephanie Fernandez,  
13 Official Court Reporter

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